

IT 96-17  
Tax Type:  
Issue:

INCOME TAX  
Erroneous Refund

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS )

v.

TAXPAYER

Taxpayer

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No.  
FEI N:

Harve D. Tucker  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** None. Taxpayer waived its right to an evidentiary hearing and opted for a disposition on documents only.

**Synopsis:**

This matter comes on to be heard pursuant to the taxpayer's timely protest to the Notice of Deficiency dated February 6, 1995. At issue is whether the taxpayer is liable for erroneous refunds issued to it for 1990 and 1991. Following review of the documents which are part of the file kept and maintained by the Department of Revenue in the regular course of its business, it is recommended that this matter be resolved in favor of the Department.

**Findings of Fact:**

1. In 1986 and 1987, the taxpayer incurred Illinois net operating losses (hereinafter "NOL") of \$848,986 and \$512,616, respectively.

2. On its original 1988 return, the taxpayer carried forward \$249,173 as a net loss deduction. The taxpayer had incurred a capital loss in 1991, which was required to be carried back. Therefore, the taxpayer filed a 1988 amended return on September 24, 1992, which carried back \$142,231 in capital losses. This in turn decreased the amount of Illinois base income, and therefore the amount of the net loss deduction to \$147,468. No tax as paid in this year.

3. The subsequent audit by the Department of Revenue did not include 1988. However, in calculating the amount of carryforward remaining to be carried into the audit years, the auditor agreed with the amended return and considered the \$147,468 to have been properly applied in 1988.

4. On its original 1989 return, the taxpayer carried forward a net loss deduction of \$542,953. The taxpayer filed an amended return on September 24, 1992, which did not change the amount of the deduction. However, due to the change in the deduction for 1988, the amount of Illinois net loss available for carryforward was increased. No tax was paid on either return.

5. The taxpayer was audited for 1989. Audit adjustments increased the amount of Illinois base income to \$667,860. Therefore, the net loss deduction per audit was also increased to \$667,860. No tax was due or paid for this audit year.

6. On its original 1990 return, the taxpayer carried forward a net loss deduction of \$569,428 (\$56,810 from 1986 and \$512,618 from 1987). Tax was paid on the original return of \$47,010. Taxpayer filed an amended return on September 24, 1992, which changed the amount of the loss deduction to \$671,133. This amended return showed a refund due of \$7,336.

7. The taxpayer was audited for 1990. Due to changes in net loss deductions in previous years, the amount of the deduction from 1986 was reduced to \$33,608. The \$512,618 deduction from 1987 was carried over in its entirety. Other audit adjustments to subtraction modifications, etc., increased Illinois base income. The result of the audit was that the taxpayer had a deficiency for this year of \$7,931. That amount was paid, inclusive of interest, in April, 1993. This includes all applicable Illinois net loss carryforwards from the IL-1120-X.

8. On July 23, 1993, a refund was issued to the taxpayer in the amount of \$7,336, reflecting the amount due as shown on the amended return filed by the taxpayer for the 1990 year.

9. On its original 1991 return, the taxpayer included an amount on line 4c of Part V, "Carryforward of credit for replacement tax paid" of \$749. However, no entitlement to such a credit had accrued.

10. When the return was processed, the taxpayer was given a credit of \$780 for Replacement Tax paid, along with the incorrect \$749 credit.

11. Taxpayer was refunded an additional \$781 on January 8, 1993. This left the taxpayer with a total tax paid of \$66,104.

12. Taxpayer was audited for 1991. Audit adjustments were made which resulted in a deficiency. However, the EDA-25 and resulting IL-870 calculations performed were in error. The EDA-25 did not show the \$780 credit in Column A, nor did it include the \$781 refund in "Amounts Refunded". The deficiency was based on tax paid of \$66,885, and not the correct tax of \$66,104. It should also be noted that the audit removed the \$749 "credit carryforward" in column C. Therefore, the taxpayer has paid \$66,660 for this year, while the correct amount of tax per audit is \$70,441.

**Conclusions of Law:**

The refunds were issued erroneously and should be repaid by the taxpayer. For 1990, the refund shown to be due on its amended return was granted in error when there was actually a deficiency due as the result of an audit. For 1991, the taxpayer took a credit to which it was not entitled, which was not reflected in the subsequent audit.

It should be noted that the "amended returns" filed by the taxpayer with its protest are not signed and therefore cannot be considered as actually having been filed. Further, the amended returns are not correct in their facial computations. The taxpayer has included an adjustment to the subtraction modification for U.S. Government interest in each IL-1120-X. However, the taxpayer has not included the total of adjustments that were agreed to and signed off on per the audit. These IL-1120-Xs start with Column A per the original return. However, as previously noted, the last assessed tax is the agreed audit. Thus the "amended returns" have no evidentiary or other value here.

It is therefore recommended that a final decision be issued consistent with the determinations herein and that the Notice of Deficiency be affirmed in its entirety.

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Administrative Law Judge